Supreme Court, U.S.
FILED

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In The

# Supreme Court of the United States

LESTER WILLIAM COLE,

*Petitioner,*

v.

STATE OF CALIFORNIA,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Court Of Appeal Of California**

## PETITION FOR A WRIT OF CERTIORARI

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27pp

## QUESTION PRESENTED

Whether *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968), as interpreted by *Minnesota v. Dickerson*, 508 U.S. 366, 124 L.Ed.2d 334, 113 S.Ct. 2130 (1993), permits an officer merely conducting a patdown search to remove a box-like object from a suspect's pocket, even though it is not immediately apparent that the object is either a weapon or contraband, simply because the officer has already found a weapon?

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Lester Cole, respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeal of California affirming his judgment of conviction.

## OPINION BELOW

The unreported judgment of the California Court of Appeal was rendered on August 1, 2001, affirming petitioner's conviction, and is reproduced in the Appendix hereto, pages A-1 through A-5. A petition for rehearing, to reconsider the relevancy of the Ninth Circuit's decision in *United States v. Miles*, 247 F.3d 1009 (9th Cir. 2001), was timely filed and denied on August 20, 2001. A copy of the denial order appears at pages A-6 and A-7. A petition for review to the California Supreme Court was timely filed and denied on October 10, 2001. A copy of the denial order appears at page A-8. The Court of Appeal issued the remittittur on November 21, 2001 and appears at page A-9.

## JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth and Fourteenth Amendments are set forth in full in Appendix page A-10.

## STATEMENT OF THE CASE

An information charged petitioner, Lester Cole, with sale of a controlled substance in violation of California Health and Safety Code section 11379, subdivision (a) and possession for sale of a controlled substance in violation of section 11378. The information further alleged petitioner had suffered two prior convictions for serious or violent felonies within the meaning of Penal Code section 667, subdivisions (b) through (i) and section 1170.12, subdivisions (a) through (d), and that he had served five prior prison terms within the meaning of section 667.5, subdivision (b). (Appendix p. A-2.)

Trial counsel filed a motion to suppress challenging the validity and length of petitioner's detention as well as whether the detaining deputy had reasonable suspicion to believe that the box he recovered from petitioner's person was a weapon. The court denied the motion because it found the deputy had "probable cause to open the box." (Appendix pp. A-2 – A-3.)

On the prosecutor's motion, the information was amended to add a charge of possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a) as count 3. Petitioner then waived his constitutional rights and pled no contest to this new charge. He also admitted suffering one strike prior and

serving five prior prison terms. The court sentenced petitioner to the low-term of sixteen months, doubled to thirty-two, plus one year for each of the prior prison term allegations, for a total of seven years, eight months. The court dismissed the remaining two counts. Petitioner appealed the denial of the Superior Court's suppression motion. (Appendix p. A-2.)

## STATEMENT OF FACTS

On April 22, 2000, at 3:30 a.m., Los Angeles County Sheriff's Deputy Elliott Uribe stopped petitioner for driving a vehicle without a working license plate lamp. As the deputy walked to petitioner's car, he saw petitioner place a folding knife on the dashboard. Uribe directed petitioner to exit his car. Uribe then asked petitioner if he had any other weapons on his person. Petitioner said, "No." Uribe patted petitioner down and found a razor knife in his left rear pants pocket. The deputy also felt a hard, small box-like object in petitioner's left front pocket. Uribe asked petitioner what was in his front pocket and petitioner responded that he did not know. Fearing the small item could possibly be another weapon,[1] he removed it from petitioner's pocket. When the deputy did so he noticed it was a small box wrapped in duct tape, that had a magnet attached to it and a baggie protruding from it. The deputy assumed "that there was possibly narcotics inside the box." The deputy

[1] The deputy also testified that the object could have been a cigarette lighter.

pulled the baggie the rest of the way out of the box and found it contained a crystal-like substance. In all, there were eight baggies in the box. Four of them were found to contain 1.928 grams of methamphetamine. (Appendix A-2 – A-3.)

## HOW THE FEDERAL QUESTION WAS PRESENTED AND DECIDED BELOW

During his preliminary hearing and then again later in the Superior Court, Cole moved to suppress the narcotics discovered as a result of the warrantless search of his person by Los Angeles County Sheriff's Deputy Elliott Uribe. The Superior Court denied the motion because it found the deputy had "probable cause to open the box." (Appendix p. A-3.)

On appeal, petitioner challenged the constitutionality of the warrantless seizure of the small box from his front pocket. Specifically, petitioner argued that because the deputy did not reasonably suspect the small box that he felt during the patdown search was either a weapon or contraband, he unconstitutionally removed the box from petitioner's pocket. In affirming petitioner's conviction, the Court of Appeal found as follows:

> "Petitioner had lied about the presence of the razor knife in his pocket when Uribe had earlier asked petitioner if he had any weapons on his person. When Uribe felt the box in another pocket and asked petitioner what it was, petitioner said he did not know. Uribe had been a sheriff's deputy for nine years. Based on his knowledge and experience, weapons come

> in 'various seizes and shapes,' and he believed that the box might have been another weapon. His belief that the object might have been a weapon was reasonable under the circumstances here presented, and he was justified in removing the box from petitioner's pocket." (Appendix p. A-5.)

In reaching such a conclusion, the Court of Appeal all but ignored in a recent Ninth Circuit opinion, *United States v. Miles, supra,* 247 F.3d 1009, which came to the exact opposite conclusion in an almost identical situation. (Appendix pp. A-5 – A-7.)

Petitioner filed a petition for rehearing because the Court of Appeal stated at the conclusion of its opinion that the Ninth Circuit's decision in *United States v. Miles* lent no support to petitioner's case. (Appendix p. A-5.) In the petition for rehearing, petitioner pointed out that the Ninth Circuit relied on binding Supreme Court precedent, namely *Terry v. Ohio, supra,* 392 U.S. 1 and *Minnesota v. Dickerson, supra,* 508 U.S. 366. Petitioner also noted that the object that was seized from Miles, and suppressed by the Ninth Circuit, was described in a similar manner as the object at issue in this case.[2] The Court of Appeal modified its opinion to say that *Miles* was distinguishable, as opposed to completely irrelevant, but did not alter the disposition of petitioner's appeal. (Appendix pp. A-6 – A-7.) The California Supreme Court subsequently

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[2] In *Miles,* the box was described as being "no bigger than a large package of chewing gum and was one-half the size of a package of cigarettes." (*Id.,* at p. 1014.) Here, the box was the size of a cigarette lighter and small enough to fit in the front pocket of a man's pants.

denied Cole's petition for review without issuing an opinion. (Appendix p. A-8.)

## REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this case presents an issue to which Supreme Court Rule 10(b) applies; i.e., the California Court of Appeal decided an important question of federal constitutional law in a manner that conflicts with the way in which the Ninth Circuit had resolved the identical question only a few months earlier in *United States v. Miles, supra,* 247 F.3d 1009. The issue, as it was presented to the Court of Appeal, as well as to the California Supreme Court, is as follows: Whether this Court's decision in *Terry v. Ohio,* as interpreted in *Minnesota v. Dickerson,* permits a police officer properly conducting a patdown search to remove a box-like object from a suspect's pocket, even though it is not immediately apparent that the object is a weapon or contraband, simply because the officer has already discovered a weapon elsewhere on the suspect's person?[3] This Court should grant a writ of certiorari so it can resolve the conflict between the Ninth Circuit and the California Court of Appeal, as well as confirm under what circumstances it is constitutionally permissible for a police officer to remove an object, which the officer does not know to be a weapon, from a suspect's clothing during a patdown search.

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[3] There was no testimony presented at the suppression hearing indicating the weapon (a small razor knife) that was discovered gave the deputy probable cause to arrest.

**Federal Authority Indicates Deputy Uribe Removed The Box He Discovered In Petitioner's Pocket During A Patdown Search In Violation Of The Fourth Amendment's Prohibition On Unreasonable Searches And Seizures.**

The Court of Appeal concluded that the officer properly removed the box for the following reasons: (1) petitioner had told Deputy Uribe that he did not have any other weapons and then the deputy found the razor knife in petitioner's back pocket; (2) petitioner told the officer he did not know what the box was; and (3) the deputy's knowledge and experience taught him that weapons come in "various sizes and shapes[.]" (Appendix. p. A-4.) The Court of Appeal's conclusion is based on a misreading of this Court's binding precedent and the complete disregard of a recent Ninth Circuit opinion squarely on point.

During a constitutionally valid *Terry* stop, an officer is permitted to patdown the individual for weapons if the officer reasonably believes the individual may be armed and dangerous. (*Terry v. Ohio, supra,* 392 U.S. at p. 27; *Adams v. Williams,* 407 U.S. 143, 146, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972).) Such a search "must be strictly 'limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.' " (*Minnesota v. Dickerson, supra,* 508 U.S. at p. 378 [citation omitted].) In order for an item to be lawfully seized, the nature of the item must be "immediately apparent" to the officer conducting the patdown search. (*Id.,* at pp. 375-376.) Removal or manipulation of the object, beyond what is necessary to ascertain whether it is a weapon, in order to determine the exact identity of an

object is not permitted under *Terry* or the "plain feel doctrine" enunciated in *Dickerson*. (*Id.*, at p. 379.) Thus, in order for the warrantless seizure of the box to be justified as the product of a legal patdown search, it must be found that the box "could have felt like an object usable as an instrument of assault." (*People v. McKelvy*, 23 Cal.App.3d 1027, 1039 (1972), citing *Sibron v. New York*, 392 U.S. 40, 65-66, 20 L.Ed.2d 917, 934, 88 S.Ct. 1889, 1902 (1968).)

As previously noted, the Ninth Circuit recently considered very similar facts in *United States v. Miles, supra*, 247 F.3d 1009. The officer in *Miles* detained the defendant because he matched the description of a suspect who had recently fired a gun at a nearby house. During the patdown search, the officer also felt a small box. (*Id.*, at pp. 1010-1012.) The box was the size of a large package of chewing gum and half the size of a pack of cigarettes. (*Id.*, at p. 1014.) The Ninth Circuit held that the officer went beyond the permissible bounds of *Terry*, as construed in *Minnesota v. Dickerson*, when he shook the box while it was still inside the defendant's pocket. The court opined that it was impossible that the officer reasonably believed the box to be a weapon. Further, the court refused to accept the pure speculation that the box might have contained a "pen knife or needle" as justification for shaking or manipulating the box. (*Id.*, at pp. 1014-1015.) The Ninth Circuit reached these conclusions and suppressed the contents of the box despite the fact the officer was looking for a suspect reported to have recently fired a gun.

The box in this case was described as big enough to hold a cigarette lighter but small enough to fit in the front

pocket of a man's pants. (Appendix. pp. A-1 – A-3.) Since there is virtually no difference in size between a large package of chewing gum and a standard cigarette lighter, the box at issue in this case must be quite similar in size to the one at issue in *Miles*. As in *Miles*, the deputy failed to testify that anything about the way the box felt caused him to immediately recognize it as a weapon or contraband. Indeed, the deputy testified that, until he removed the object, he thought it might have been a lighter. As such, under the Ninth Circuit's interpretation of *Dickerson's* plain feel rule, the deputy's removal of the box went beyond the permissible scope of a *Terry* search. (*United States v. Miles, supra,* 247 F.3d at pp. 1014-1015; see also *United States v. Lemons,* 153 F.Supp.3d 948, 955 (Wis. 2001).)

This conclusion is not altered by the fact that Deputy Uribe had already found a weapon on petitioner. The Ninth Circuit was faced with a similar situation in *Miles*. There, the officer was looking for an armed suspect and that court still held that the removal of the box from Miles' clothes violated his Fourth Amendment rights. (*United States v. Miles, supra,* 247 F.3d at pp. 1010-1015.) Here, the deputy was looking for more weapons on a suspect he already found to be in possession of a small knife. Thus, under the rationale of *Miles*, the search was unconstitutional even though the deputy had already discovered on petitioner a common utensil that could have been used as a weapon.[4]

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[4] See footnote 3.

In its modified opinion, the Court of Appeal stated that *Miles* was distinguishable because the deputy in this case reasonably believed the box might have been a weapon. (Appendix pp. A-6 – A-7.) Such a conclusion is not supported by either the facts or the precedent set by this Court. As the California Supreme Court recognized when it considered the opinion in *Sibron v. New York*, "A box of matches, a plastic pouch, a pack of cigarettes, a wrapped sandwich, a container of pills, a wallet, coins, folded papers, and many other small items usually carried in an individual's pocket do not ordinarily feel like weapons." (*People v. Mosher*, 1 Cal.3d 379, 394 (1969), citing *Sibron v. New York, supra*, 392 U.S. at pp. 64-66.) A small rectangular box, big enough to hold a lighter but small enough to fit in a person's pants' pocket, is not the type of object that ordinarily feels like a weapon. The rules governing a patdown search, first enunciated by this Court in *Terry v. Ohio*, do not permit the removal of an item from a suspect's clothing whose tactile contours will not support the reasonable possibility that it might be a weapon. (See *Sibron v. New York, supra*, 392 U.S. at pp. 65-66.)

Since, under an objective standard of reasonableness, the deputy did not immediately recognize the box to be or contain a weapon, this Court's authority prohibited his removal of the box from petitioner's pocket. (*Minnesota v. Dickerson, supra*, 508 U.S. at pp. 375-376.) By removing the box from petitioner's pocket, Deputy Uribe violated petitioner's Fourth Amendment right to be free from unreasonable searches and seizures. Because the deputy did not have a reasonable belief that the box might be a

weapon, the evidence obtained as a result of his warrantless seizure of the box should have been suppressed. (See e.g., *Mapp v. Ohio*, 367 U.S. 643, 655, 6 L.Ed.2d 1081, 81 S.Ct. 1684 (1961); *Wong Sun v. United States*, 371 U.S. 471, 485-488, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963).)

## CONCLUSION

Since the Court of Appeal erroneously affirmed the denial of petitioner's motion to suppress and, in so doing, came to a decision that contradicts a recent Ninth Circuit Court of Appeal decision squarely on point, this Court should grant a writ of certiorari in order that it may resolve this conflict and reconfirm the permissible bounds of patdown search under *Terry v. Ohio*.

WHEREFORE, petitioner prays for a writ of certiorari, to issue to the Court of Appeal of California.

Dated this 7th day of December, 2001, at Los Angeles, California.

Respectfully submitted,

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>LESTER WILLIAM COLE,<br>Defendant and Appellant. | B147882<br>(Los Angeles County Super. Ct. No. MA020429) |

(Filed Aug. 01, 2001)

APPEAL from the judgment of the Superior Court of Los Angeles County. Frank Y. Johnson, Judge. Affirmed.

Jonathan B. Steiner and Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, Marc E. Turchin and Mary E. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

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Lester William Cole appeals from the judgment entered upon his negotiated plea of no contest to possession of a controlled substance, methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and his admission of a

prior conviction within the meaning of the three strikes law (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)) as well as five prior felony convictions for which he served separate prison terms (Pen. Code, § 667.5, subd. (b)). He was sentenced to seven years eight months in prison. He contends that the trial court erred in denying his motion to suppress evidence pursuant to Penal Code section 1538.5 because the narcotics were the fruit of an illegal patdown search. We affirm.

## FACTS

The record discloses that in the early morning hours of April 22, 2000, a Los Angeles County deputy sheriff pulled appellant over for a vehicle stop. During a patdown search for weapons, the deputy found approximately two grams of methamphetamine.

## MOTION TO SUPPRESS EVIDENCE

Appellant moved to suppress the methamphetamine on the ground that the seizure of the contraband was unlawful. Viewed in accordance with the usual standard of review (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1073-1074), the evidence at the hearing on the suppression motion established that Deputy Sheriff Elliott Uribe pulled appellant over for driving with an inoperable license plate lamp. As the deputy walked toward appellant's car, he saw appellant placing a three and a half to four-inch folding lock blade knife on the vehicle's dashboard. He ordered appellant out of the car in order to remove him from the vicinity of the knife, and he asked

appellant if he had any other weapons "in his possession on his person." Appellant said, " 'No.' "

To ensure his safety, Uribe patted appellant down. He found a two-inch long hidden-blade razor knife in appellant's rear pants pocket. Uribe then felt a hard, box-like object in appellant's front pocket and asked appellant what it was. Appellant said he did not know.

Uribe was afraid that the box might have been another weapon, and pulled the box out of appellant's pocket.[1] He observed that the box was wrapped in duct tape and had a magnet attached to it and a clear plastic zip-lock baggie protruding from it. Uribe "pretty much knew" that there would be narcotics inside the box because of the plastic baggie and because he previously had seen similar boxes that had been used to conceal narcotics. He pulled the baggie the rest of the way out of the box. Inside the baggie was a crystal-like substance which resembled methamphetamine. The box had eight baggies inside and analysis of four of the baggies established that they contained 1.928 grams of a powder containing methamphetamine.

A deputy sheriff testifying as an expert in methamphetamine sales indicated that, in his opinion, the methamphetamine was possessed for sale. He had previously seen boxes similar to the one removed from appellant's pocket and testified that such boxes, usually

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[1] He testified, "It could have been a weapon. It could have been a cigarette lighter. My fear was it was some kind of weapon, because initially he told me he had no other weapons, and I had found the knife prior."

magnetic and wrapped in duct tape, were used in cars for concealing narcotics.

At the hearing on the motion, appellant argued that the patdown was not justified and that the removal of the box from his pocket was unlawful because it was not immediately apparent from the patdown that the box was either a weapon or contraband. The prosecutor argued that the patdown and subsequent removal of the box from the pocket were warranted and that the box was opened as a search incident to arrest because the deputy had probable cause to believe it contained contraband. The trial court denied the suppression motion, finding that, "incident to arrest after he was lied to with two weapons, he felt it, and it had the magnet and the duct tape and the zip-lock sticking up, he was justified in doing so for his protection and to secure anything that would be of danger to him." The court also found that the deputy had probable cause to open the box.

## DISCUSSION

Appellant contends that the seizure of the box containing methamphetamine was improper because the deputy did not have probable cause to arrest him prior to opening the box and because the deputy did not have a reasonable belief that the box might be a weapon. This contention is without merit.

The patdown search for weapons was properly undertaken by Uribe because the deputy reasonably believed that appellant might be armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 27; *People v. Avila, supra,* 58 Cal.App.4th at p. 1074.) A protective search under *Terry v.*

*Ohio* may not go beyond what is necessary to determine whether the suspect is armed. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 373.) "However, if contraband is found while performing a permissible *Terry* search, the officer cannot be expected to ignore that contraband." (*People v. Avila, supra,* at p. 1075.)

Appellant had lied about the presence of the razor knife in his pocket when Uribe had earlier asked appellant if he had any weapons on his person. When Uribe felt the box in another pocket and asked appellant what it was, appellant said he did not know. Uribe had been a sheriff's deputy for nine years. Based on his knowledge and experience, weapons come in "various sizes and shapes," and he believed that the box might have been another weapon. His belief that the object might have been a weapon was reasonable under the circumstances here presented, and he was justified in removing the box from appellant's pocket. (*People v. Limon* (1993) 17 Cal.App.4th 524, 535; see *People v. Thurman* (1989) 209 Cal.App.3d 817, 825-826.)

When Uribe observed the box, from which a plastic baggie was protruding, he formed the opinion, based on his prior experience, that the box contained contraband. This constituted probable cause for appellant's arrest for possession of a controlled substance, and the deputy therefore properly pulled the baggie out of the box as a search incident to arrest.[2] (*People v. Limon, supra,* at pp.

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[2] We review the objective reasonableness of the facts known to the deputy regardless of the theory set forth in his testimony. (*People v. Limon, supra,* 17 Cal.App.4th 524 at pp. 538-539.)

537-538; see *People v. Avila, supra,* 58 Cal.App.4th at p. 1075.) *United States v. Miles* (9th Cir. 2001) 247 F.3d 1009, 1013-1015, discussed by appellant's counsel during oral argument, lends no support to his case. The denial of appellant's motion to suppress evidence was proper.

## DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

/s/ Cooper, J.
COOPER

We concur:

/s/ Boren, P.J.
BOREN

/s/ Todd, J.
TODD

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>LESTER WILLIAM COLE,<br><br>Defendant and Appellant, | B147882<br><br>(Los Angeles County Super. Ct. No. MA 020429)<br><br>ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING<br><br>[NO CHANGE IN JUDGMENT]<br><br>(Filed Aug. 20, 2001) |

THE COURT:

It is ordered that the opinion filed herein on August 1, 2001, be modified as follows:

On page 5, the last two sentences before "DISPOSITION" are deleted and the following is substituted therefore:

> *United States v. Miles* (9th Cir. 2001) 247 F.3d 1009, 1013-1015, on which appellant relies, is distinguishable, since the court there determined that it was clear to the officer that the small box he felt in the defendant's pocket could not possibly have been a weapon, while we have

concluded that, under the circumstances presented here, Uribe reasonably believed the box might have been a weapon. *Miles* therefore lends no support to appellant's cause. The denial of appellant's motion to suppress evidence was proper.

Appellant's petition for rehearing is denied.

There is no change in the judgment.

/s/ Boren /s/ Cooper /s/ Reed

Court of Appeal, Second Appellate District, Division Two
– No. B147882
**S100329**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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(Filed Oct. 10, 2001)

THE PEOPLE, Plaintiff and Respondent,

v.

LESTER WILLIAM COLE, Defendant and Apellant.

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Petition for review DENIED.

/s/ George
Chief Justice

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IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 2

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

The People
vs.
Lester W. Cole
B147882
Los Angeles County No. MA 020429

***** REMITTITUR *****

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on August 1, 2001 and that this order, opinion or decision has now become final.

Witness my hand and the seal of the Court affixed at my office this

Nov. 21, 2001

Joseph A. Lane, Clerk

by: _____
Deputy Clerk

cc: All Counsel (w/out attachment)
File

## CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV of the Constitution of the United States provides, *Inter alia* that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV provides:

Sect. 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.